Council for Exceptional Children

- Administrators and Special Education

- David Bateman
ESSA
## Accountability: Then and Now

<table>
<thead>
<tr>
<th>Issue</th>
<th>No Child Left Behind</th>
<th>Every Student Succeeds Act (with Proposed Regulations)</th>
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<tbody>
<tr>
<td>Expectations for Students</td>
<td>Unrealistic goals and targets created incentives for States to lower standards for students, well below levels needed to succeed after high school.</td>
<td>States must set expectations for all students that will put them on a path to succeed in college or career, with flexibility to design accountability systems that best support this goal.</td>
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<td>Goals and Timelines</td>
<td>States were held to a federally-prescribed timeline for all students to achieve proficiency in reading and math.</td>
<td>States set their own ambitious goals and short-term measures of progress that hold high expectations for all students and reflect the progress necessary to close achievement gaps.</td>
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<td>Measures of School Quality</td>
<td>School performance was defined and measured narrowly, with a heavy focus on math and reading test scores and high school graduation rates.</td>
<td>Increased state flexibility to take a more holistic view of school performance based on multiple measures including: achievement in reading and math; academic progress in elementary and middle schools; graduation rates in high schools; rates of progress for English learners achieving language proficiency; and a state-determined indicator of school quality or student success.</td>
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<td>Transparency around Performance</td>
<td>Schools that did not meet benchmarks were given a “pass/fail” mark and a label (e.g., corrective action) associated with the types of improvement efforts that had to be undertaken in the school—information that was not meaningful or particularly useful to parents and the public.</td>
<td>States create a multi-level rating system that clearly communicates to parents and communities how their schools are doing, taking into account all of the measures of school performance. Information displayed in a timely manner on annual report cards, designed with input from parents.</td>
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</table>
| Interventions | Federally-prescribed interventions for schools and districts identified as “failing.” | Locally-tailored, evidenced-based interventions for schools identified for support.  
| | Improvement plans designed in collaboration with teachers, principals, parents, and other stakeholders. |
| Resources | Districts were directed to set-aside substantial amounts of funding for specific federally-prescribed interventions, which were not consistently effective. | Districts no longer forced to set aside funds.  
| | State funds are prioritized to a state's lowest-performing five percent of schools, high schools with low graduation rates, and schools with persistent low performance among subgroups of students.  
| | Flexibility to use funds for locally-tailored, evidence-based strategies. |
New Changes to ESSA (formerly NCLB)
ESSA Indicator #1

Number of emails returned within 24 hours

Divided

By hours spent returning phone calls
ESSA Indicator #2

Number of students named Kevin

Divided

By the number of students named Katelyn
ESSA Indicator #3

Hours spent in an IEP meeting

Divided

By the number of pages in the IEP x. 3.14
ESSA Indicator #4

Happiness (on a Likert scale) of the special education administrator
ESSA Indicator #5

Venn diagram (in 3-D) of the special education teachers and the general education teachers (again, in 3-D).
ESSA Indicator #6

Number of times teachers show up on-time divided by odd requests
ESSA Indicator #7

Left handed students

Divided

By right handed students
ESSA Indicator #8

Attitude on Sunday Night

Divided

by Attitude on Friday Night
IDEA
Disproportionality

1) identification, especially in certain categories of disability;

2) placement in certain educational settings;

3) the incidence, type, and duration of disciplinary actions, including suspensions and expulsions
RDA

Results Driven Accountability

Improved reading?
Improved math?
Graduation?
Post-high school outcomes?
Transition Outcomes

Current law 16 years of age

Middle school?
Due Process Procedures

ADR?
Mediation?
RTI

1) Should tiered interventions targeted to general education students, including the funding set-aside, remain in IDEA?

2) Will RTI data remain one evaluation component or a larger factor in determining eligibility for students with learning disabilities?
Focus

Revitalize the Individualized Education Program (IEP)
• Address challenges of disability categories
• Improve transition services, especially from the K-12 system
• Maximize reporting requirements to focus on outcomes
• Create better alignment between IDEA and other legislation
• Prevent the use of exclusionary or harmful disciplinary practices
• Improve funding structures to support outcomes
Personel Shortages

Only in 49 states

Specialized Instructional Support Personnel (SISP)

Lower standards?
Increases turnover
Paperwork
Budget

Running for reelection
Supreme Court Cases
The Essence of Special Education:

- To provide an education conferring a Free Appropriate Public Education (FAPE)
What is a FAPE?

- Special education & related services that are:
  - Provided at public expense
  - Meet the standards of the SEA
  - Includes preschool, elementary, or secondary education
  - Are provided in conformity with the individualized education program (IEP)
What is a FAPE?

- FAPE issues account for 85%-90% of all special education litigation.

Gerl, 2014
Board of Education v. Rowley

The Rowley Two-Part Test

- Has the state complied with the procedures set forth in IDEA?

- Is the IEP reasonably calculated to enable the student to receive educational benefits?
Educational Benefit

“**We do not hold today** that every handicapped child who is advancing from grade to grade is automatically receiving a “free appropriate public education.”” (Rowley, p. 203).

Rowley, p. 190
“We therefore conclude that the ‘basic floor of opportunity’ consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.”
Split in the Circuit Courts

- **Lower standard:** Some benefit, more than trivial or *de minimus*

- **Higher standard:** Meaningful benefit

- **Confused standard:** Different panels of the circuit court rule differently
## Split in the Circuit Courts

<table>
<thead>
<tr>
<th>Lower Standard (slightly more than nothing)</th>
<th>Confused Standard</th>
<th>Higher Standard (meaningful benefit)</th>
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<tbody>
<tr>
<td>1\textsuperscript{st} Circuit</td>
<td>9th Circuit</td>
<td>3\textsuperscript{rd} Circuit</td>
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<td>2\textsuperscript{nd} Circuit</td>
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<td>6\textsuperscript{th} Circuit</td>
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<tr>
<td>11\textsuperscript{th} Circuit</td>
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Circuit Courts
FAPE Tests

Really Confused!

No Test

Lower Standard

Lower Standard

Lower Standard

Lower Standard

Lower Standard

Higher Standard

Lower Standard
Endrew F. v. Douglas County School District
Facts of the Case

- Endrew F. (Drew) was diagnosed with autism and attention deficit hyperactivity disorder at age two.
- He received special education services in the Douglas County Schools through 4th grade.
- Drew’s parents rejected an IEP proposed by the school district.
- Drew’s parents enrolled him at a private school, the Firefly Autism House.
- They requested that Douglas County Schools reimburse them for tuition and related expenses.
Drew’s parents contended the school had denied him a FAPE.

The administrative law judge (ALJ) denied the request, finding the school district had provided Drew with a FAPE.

The parents filed suit in the U.S. District Court for the District of Colorado. The judge affirmed the ALJ’s decision.

The parents filed an appeal with the U.S. Circuit Court of Appeals in the 10th Circuit.
Appeal to the 10th Circuit

- Drew’s parents contended they were entitled to tuition reimbursement because the ALJ and Federal District court failed to recognize the District’s procedural and substantive violations of the IDEA.
- The court noted the two conditions under which tuition reimbursement is available under the IDEA.
- Of the two, the Court only addressed whether the District had violated FAPE by failing to provide Drew with a FAPE.
The Parents Challenge

- **Procedural deficiencies**
  - The District failed to provide adequate reporting on Drew’s progress.
  - The District failed to properly assess Drew’s behavior and did not include an adequate plan to address behavior problems (no FBA).

- **Substantive deficiencies**
  - Drew made no measurable progress on his goals.
  - District failed to address Drew’s escalating behavioral problems.
The 10th Circuit’s Decision

- Procedural deficiencies
  - Even though the district admitted to not reporting Drew’s progress, and the court “did not endorse the District’s reporting,” the parents still participated in a meaningful way in crafting his IEP.
  - Because the district “considered” Drew’s behavior and possible interventions, it met the requirements of the IDEA.
  - An FBA is only required when there is a disciplinary change of placement.
The 10th Circuit’s Decision

- **Substantive deficiencies**
  - Although Drew’s progress was not measured, the ALJ decided he had made progress in the past so he had made some educational progress during his time in the district, and some educational progress was sufficient.
  - Many of Drew’s goals remained the same from year to year but sometimes they were changed.
  - The district has made sufficient effort to craft a behavioral plan so it did not deny FAPE.
Appeal to the U.S. Supreme Court

- On December 22, 2015 the parents appealed to the U.S. Supreme Court

- **Question presented:** What is the level of educational benefit school districts must confer on children with disabilities to provide them with the free appropriate public education guaranteed by the Individuals with Disabilities Education Act?
Oral Arguments: January 11, 2017

(L to R) Dr. Deb Ziegler, CEC’s Director of Policy & Advocacy; Katie Grady, CEC’s Policy & Advocacy Coordinator; Dr. Mitchell Yell & Dr. David Bateman attend oral arguments for Endrew F. v. Douglas County School District at the United States Supreme Court.
“A Standard with a Bite!”
“Some Benefit,” or “Some Benefit?”
“IDEA provides a clear standard. The problem is coming up with the right words.”
Unanimous Ruling

- Guidance on Substantive Change
Reasons

- Hearing Officer
- 580 hearings
- Principals serving as LEA’s
- Testifying without a clue
- Making things worse
More Reasons-National Survey

- National Survey of state requirements
- All 50 and District of Columbia
- Return rate 96%
- Web search of state depts of ed
- Phone interviews with ambiguous states (n=49)
I am interested in certification/competency standards necessary to become a principal in <state>. I am particularly interested in any competency/class work standards related to special education. Could you please send me a copy of requirements necessary for principal certification?
National Survey (cont)

- Realization important for some
- 17 states-intro to sped
- 2 states-mainstreaming
- 9 states-other competencies
- 22 states-no competencies/coursework
Recent Survey from CASE

Last Week’s Polling Question:
In your district, who supervises the special education teachers?

- Principal: 57%
- Special Education Supervisor: 18%
- Program Specialist: 0%
- Master Teacher: 0%
- Combination of General Ed and Special Ed administrators/ coordinators: 25%
- Other: 0%
What Do Principals Want Special Ed Administrators to Know About Being a Building Leader?
Want to Know

1. Hard
2. Lots of work
3. Mostly like their jobs
4. Sunday nights are hard
5. Special ed is a lot of work

6. Don’t know a lot

7. Need help

8. Want to do better
Want to Know (3)

9. They do not have time for special ed

10. They do not know a good IEP goal from a bad one

11. Can we just give the parents anything they want?

12. I have so many other kids
Want to Know (4)

13. Don’t really want to know

14. Know they need to know, but need support

15. Why are there so many rules?

16. Do we have to do the best thing for the students all the time?
17. They really want the students in their building

18. Working with students with disabilities has made them a better teacher

19. Everyone benefits when these students are here

20. It takes a lot of work
Want to Know (6)

21. Discipline is hard

22. We have to mentor untrained teachers

23. Tough to balance
What Can a Special Education Administrator Do To Make Them a Better Principal
Make Better

1. Provide resources
2. Provide training
3. Follow-up
4. Redo staffing formulas to include more support for students
5. Help train general education staff

6. Work towards an inclusionary model

7. We need more people

8. Keep in touch
Make Better (3)

9. Professional development

10. Answer questions!

11. Return emails

12. Be the point person—we don’t know what we are doing
13. Come sit in one of the classrooms, both sped and general

14. Teach the special ed teachers the standards

15. Deal with promised cures

16. Shower
17. Training for gen ed teachers
18. Check with us more about what we need
19. Common issue training
20. Phone number?
Make Better (6)

21. Participate in grade level meetings

22. Be the expert

23. Say NO!

24. Flow chart for authority
Make Better (7)

25. Support and coach the special ed teachers

26. Check with teachers for needs

27. Help plan PD

28. Check with their schedule before making plans
A Teacher's Guide to Special Education

David F. Bateman & Jennifer L. Cline
Using Data to Improve Student Learning
Making It Meaningful to Classroom Teachers

Data-Based Instruction
In today's schools, there is more emphasis than ever on data-based instruction. Data can help teachers measure growth, identify needs, define the extent of a problem, make instructional decisions, and provide justification for resource allocation. In order for teachers to be able to use data to improve instruction, they must know how to collect relevant data through a variety of forms and internal assessments, and interpret the different types of data presented, including standardized and curriculum-based data.

What Are Data, Testing, Assessment, and Evaluation?
Data, testing, assessment, and evaluation are all components of a process for understanding a student's learning needs and strengths, as well as developing an appropriate program for the student. It is important to understand what each of these words means, how these components work together to improve instructional practices, and which of these components is being performed at any given time.

Data is information gathered from tests or assessments, which can be standardized or non-standardized. Data gathered from assessments is used to evaluate how a student's skills are developing, i.e., how an estimation or judgment. Analysis of this data can point to where changes to instruction may be needed. At any time during the process of evaluating a student, additional tests may be required for assessment and evaluation.

<table>
<thead>
<tr>
<th>Key Terms</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Data</td>
<td>Gathered facts and statistics</td>
</tr>
<tr>
<td>Test</td>
<td>To take an assessment</td>
</tr>
<tr>
<td>Assessment (formal)</td>
<td>A formal or informal means of gathering data</td>
</tr>
<tr>
<td>Assessment (informal)</td>
<td>An estimation of something</td>
</tr>
<tr>
<td>Evaluation</td>
<td>To make a judgment of something</td>
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Some skills that are helpful in interpreting data can include:
- Determine whether or not a student is making progress.
- Plan instruction.
- Determine eligibility for specific services that may be available.
- Establish a hypothesis.
- Determine the effectiveness of instruction.
- Determine whether changes to instruction are necessary.
- Justify programs.
- Justify changes.

What Are Different Forms of Assessment?
There are three basic categories of assessment, which are based on the purpose, use of the assessment.

1. **Formative assessment** is any process used while a student is learning or practicing a topic. Formative assessment can help teachers determine whether student competencies, needs more time, or understand the concepts being taught.

2. **Interim assessment** measure the student's growth multiple times a year and track mastery of learning targets based on the district curriculum guide. Interim assessments help staff and teachers in determining whether the student is on track to meet their or their individual growth expectations and/or meet the state standards.

3. **Summative assessment** are assessments administered to the student at the end of a lesson, marking period, or school year. Many state-mandated assessments are summative.

The major difference between formative and summative assessments is that formative assessments, which indicate current student achievement, are used in the day-to-day instruction. Summative assessments, which are typically given at the end of a unit to measure growth over longer periods, do not result in the alteration of day-to-day instruction. Interim assessments are given between summative assessments to determine whether the current program and strategies are working and whether changes need to be made. One way of conducting interim assessments is through the use of curriculum-based measures.
Section 504 - Overview

IDEA

STUDENT FOCUS

SCHOOL FOCUS

COMMUNITY FOCUS

Section 504

Americans with Disabilities Act

SCHOOL FOCUS

COMMUNITY FOCUS
What is Section 504?

➢ Section 504 of The Rehabilitation Act of 1973, is a federal statute that prohibits discrimination against persons on the basis of their disability or impairment by institutions, that receive federal assistance.

➢ If a student is covered by Section 504, the district must provide such accommodations as are necessary to ensure the student has equal access to services, programs or activities offered by the school.

➢ Purpose is to provide fairness and equal access to education and is NOT designed to enhance a student’s performance.

➢ Institutions failing to uphold the protections of Section 504 are subject be reviewed by the Office of Civil Rights.
Need for Both IDEA and 504?

It should be noted that students who qualify for special education services would also qualify for Section 504;

However, a 504 Plan is not necessary because the Individualized Education Plan (IEP) must include the needed accommodations.
504 – Age & Setting

1. Section 504 protections extend for a lifetime and

2. apply to schools and the full scope of community environments receiving federal funding (such as work and access to public facilities).

Compare to IDEA……
Application of 504

_Procedural Regulation_

-Section 504 is general in its application and is not highly regulated, as it is not designed for programming purposes but to **prevent** discrimination.

Compare to IDEA…….
504 Plan Development

What is it?

❖ A (written) plan that lists the necessary accommodations to minimize the impact of the impairment. The goal is to level the playing field and grant equal access ensuring there is not discrimination.

❖ Accommodations
504 Plan Development

Who creates it?

❖ The TEAM includes people knowledgeable of the student and their needs.
  ❖ 504 Coordinator
  ❖ Teacher
  ❖ Parent

❖ Consider all school environments (bus, cafeteria, playground, field trips)
504 Plan Review and/or Updates

- At least once a year
- If the impairment changes significantly
- If classes are changed or added that may have an impact on the Plan’s appropriateness/effectiveness
- Before transitions (Elementary to middle school, middle school to High School)
- When student moves in with existing plan
Health Care Plans?

- Any student with a Health Care Plan may also qualify for a 504 plan.

- They are entitled to a 504 evaluation.

- The 504 Plan may state, “See Individual Health Care Plan”. (This will allow for changes on an “as needed” basis.)
Eligibility

• 1. Special Ed!
• 2. Be thorough, be accurate
• 3. Timelines
• 4. The right people
• 5. Parents!
• 6. Don’t fight over disability label
• 7. More than test scores
More eligible

• 8. School performance is more than just educational performance
• 9. B.A.D. v. Emotional disturbance eligible
• 10. Use doctors
• 11. Treatment centers
IEP Purposes

- Communication
- Management
- Accountability
- Compliance and monitoring
- Evaluation
The IEP Mandate

• An IEP is a statement of a student’s special education and related services

• The IEP must be in effect by the beginning of the school year

• LEAs have sole responsibility for development and implementation

• The IEP team meeting
  – Discusses assessment results
  – Develops an educational program
  – Determines placement
Important

• All unique needs arising from the disability must be addressed

• The IEP is individualized

• If a service is needed it must be provided

• IEPs are a legally binding commitment by the LEA

• The IEP must have all the required components

• The IEP must describe all services
Review IEP’s at least annually. Review more frequently if the student is having problems.
Every reporting period (most likely quarterly) consider an IEP meeting for the students not making progress.
Provide a written notice to the parents before the meeting at the beginning of the meeting. If there is a difference between what was sent to the parents and the list of who is actually attending and the purpose, provide an amended notice to the parents.*

* keep a copy.
The invite notice provided to the parents only needs to list district invitees, the parents, and possibly the student. Make sure the invite states the parents can bring others to the meeting.
After providing the parents a draft, ask for feedback from all and state the IEP has not been finalized, and spend time on the parts where there might be disagreement or there needs some modification. Do not spend time on agreed upon parts.
When a parent requests a specific service the district does not feel is necessary to provide FAPE, state this service is not necessary for the student to receive an appropriate education. Make sure you SERIOUSLY review the request and what you are providing is FAPE.
IEP’s do not go longer than a year!
IEP

1. Words to use (and mean)
2. Implement
3. Parents!
4. Educationally suitable
5. Check or internal audit
6. Implementers
7. Copy and paste
More IEP

• 8. Vote v. consensus
• 9. Do not segregate
• 10. Costs
• 11. Parents requests for private
• 12. Use your words very carefully
bi-weekly

/ˈbiːwɛklɪ/  

adjective & adverb

1. appearing or taking place every two weeks or twice a week. "a biweekly bulletin"

noun

1. a periodical that appears every two weeks or twice a week.
Bullying and FAPE
Meaningful educational progress

1. School officials (plus the IEP team)

2. Assess the impact of bullying on the student (academic and nonacademic)

3. Meeting to determine impact on the disability, not punishment for other students
Progress

Is an evaluation necessary?

What additional information would be helpful?
Services

Additional?

Different?

Additional supervision?
Placement

Change necessary?

LRE!

Do not victimize the student any more
Prior Written Notice

Make sure parents receive written information about changes
Train Staff

Notify staff of any changes to the IEP

Notify staff of need to monitor the student
Take actions against perpetrators

Investigate ALL complaints

Take seriously
Address Problem Behaviors

Don’t wait for additional problems

Make sure students feel safe
Draft IEP’s
Working with Parents
Valuable Tool

1) Saves time
2) Road map
3) Not set in stone
Start with Parents Role

1) Draft is a starting point for discussion
2) Parents have a role as a team member
3) Need their help to develop the final version
Time

1) Provide a draft ahead of time
2) If not, give time to review
3) Watch your timelines
4) Answer questions
5) Answer terminologies
6) Answer services
7) Answer everything
Revise

1) Bring red pens
2) Listen to parents
3) Listen to teachers
4) Fully consider all options
Avoiding Due Process
No educational progress

1. Keep data
2. Monitor the data
3. Make changes
4. Keep parents informed
Cadillac v. Ford

1. Best, maximize, potential

2. Appropriate
Procedural Errors

Do they deny FAPE?

Do they deny parents the right to participate?
LRE

Inclusion with support is less restrictive than a self-contained setting without support.
Specialized Instruction

1. Multiples sources for present levels

2. Identify services needed to achieve goals

3. Teach students skills associated with accommodations
Draft IEP’s
Working with Parents
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Rules For Working With Teachers About Students With Disabilities
Treat Everyone with Respect

Students
Teachers
Parents
Staff
Go Beyond the Golden Rule

Not everyone wants to be treated the same way

*Some want attention
*Some don't want attention
Be Interested

Everyone has a story, learn and remember it

Go beyond small talk
Focus on Others

Give credit
Give thanks
It’s not all about you
You are not the most important

People remember how they are treated, not facts about you
Facts v. Opinions

Controversial topics

Talk about opinions as opinions

Facts as facts
Tell the Truth

Rep. Tip O’Neill

Try with a teenager
Integrity

When no one is looking

Not for the show or glory
Smile
Eye Contact
Look Professional

Situational Specific
How to Say Important Statements
Don’t Say
“It’s not fair.”

Are we in a competition?

Ask what could have done to improve?
Don’t Say:
“This is the way it has always been done.”

1) Lazy
2) Resistant to change
3) Why don’t you want to improve?
Don’t Say: “No problem.”

Implies that you might be a problem

Say, “Happy to take care of this.”
Don’t Say:
“I think this may be a silly/stupid/weird question.”

People will lose confidence in you.

If you are not confident, others won’t be also

Say get more information
Don’t Say: “This will only take a minute.”

Implies you rush

Implies you aren’t concerned about the task
Don’t Say: **“I’ll try.”**

Implies you don’t know if if can be done.

Why should we trust you?

Commit to the task
Don’t Say:
“He won’t get it done.”

Talking negatively about others

Behind someone’s back?

Can you be trusted?

What does this say about you?
Don’t Say:

“That is not in my job description.”

Only do the bare minimum
Don’t Say:
“It’s not my fault.”

Casting blame?

Whatever went wrong, own it. Others make decisions about fault.
Don’t Say:
“‘I can’t.’”

Offer a solution or an alternative or say you will with help or guidance.
Don’t Say: “I hate this job.”

Make lives better

Hard

Do something else